



DEFENSE FINANCE AND ACCOUNTING SERVICE
ARLINGTON

1931 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22240-5291



JUN 10 2002

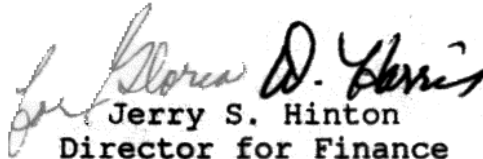
DFAS-DFM

MEMORANDUM FOR DIRECTOR, MILITARY PAY OPERATIONS, DEFENSE
FINANCE AND ACCOUNTING SERVICE (PM/CL)

SUBJECT: Interim Change to the DoDFMR, Volume 7A, Regarding
Payment for Unused Leave in Excess of 60 Days (DFAS
Item L-18)

Attached is Interim Change 33-02 to Chapter 35 of the
Defense Financial Management Regulation (DoDFMR), Volume 7A. It
has an effective date of October 1, 2001. This change authorizes
payment of accrued unused leave in excess of 60 days for members
of reserve components on active duty for over 30, but less than
365 days. This change also reorganizes the information in
Section 3501 and clarifies existing policy.

We have evaluated your comments on the proposed change and
included your comments where appropriate. Assignment of the
interim change number is your authority to initiate procedural
modifications to implement this change. Use the attached to
initiate the formal change to the DoDFMR, Volume 7A.


Jerry S. Hinton
Director for Finance

Attachment:
As stated

cc: OUSD(C) (ODCFO) (FP)
DASD(MPP) (Comp)
ODGC(F)
Service Liaisons
USCG/NOAA/PHS Liaisons
DFAS-DDM/CL
DFAS-PMA/CL

Payment for Unused Leave in Excess of 60 Days

1. Replace existing Section 3501 with the following:

3501 ACCRUED LEAVE PAY

350101. General Entitlement

A. A member who is discharged under honorable conditions is entitled to payment of unused accrued leave unless the member continues on active duty under conditions that require accrued leave to be carried forward. An enlisted member who voluntarily extends their enlistment for the first time is also entitled to payment for unused accrued leave.

1. Conditions for Payment of Unused Leave. See Tables 35-1 through 35-4 for specific rules governing whether a member may be paid for unused accrued leave.

2. Career Leave Payment Limitation of 60 days.

a. Effective February 10, 1976, a military member is entitled to receive payment for no more than 60 days of accrued leave during a military career. Payments for unused accrued leave made before that date shall be excluded from this 60-day limitation.

b. Effective July 14, 1976, a military member eligible for an unused accrued leave settlement is authorized an election with regard to payment or carry over of the leave. The member may elect to receive payment for a portion of the unused leave, not to exceed a career total of 60 days, and to have the remaining accrued leave carried forward to a new or extended enlistment. The total of paid and carried forward leave may exceed 60 days.

3. Exceptions to the 60 Day Career Leave Payment Limitation

a. Contingency Operations. The 60-day leave payment limitation does not apply with respect to leave accrued by a member of a reserve component or in the Retired Reserve or by a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps or a member of the Fleet Reserve or Fleet Marine Corps Reserve during any period while the member also is:

(1) Serving on active duty in support of a contingency operation on or after December 5, 1991, or

(2) Serving on active duty in connection with the Persian Gulf conflict (other than for training) under authority of Title 10, U.S.C. Sections 672, 688, 12302, 12304, 12306 or 12307 on or after August 2, 1990.

b. Active Duty of 31 to 365 Days. The 60-day leave payment limitation does not apply with respect to leave accrued by a member of a reserve component while serving on active duty, full-time National Guard duty, or active duty for training during a period of more than 30 days, but not in excess of 365 days, beginning on or after October 1, 2001.

c. Death on Active Duty. The 60-day leave payment limitation does not apply with respect to leave accrued by a member who dies while on active duty (or a member or former member who dies after retirement or discharge, but before receiving payment of accrued leave). Payment of accrued leave for a deceased member is based upon the unused accrued leave that he or she carried forward into the leave year in which deceased plus the unused leave that accrued during that leave year, beginning on or after February 10, 1996.

d. Career Leave Payment Total. Unused leave accrued specifically under the conditions of subparagraphs a through c, above, is additional to the member's career leave payment limitation of 60 days. Such unused excepted leave may be carried forward into a new contract period of active duty and later be eligible for payment in addition to other leave to which the 60-day career ceiling applies. See paragraph 350102, below, for rules that apply to accounting for accrued and used leave and paragraph 350103, below, for calculating the payment amount and the possible application of the combat zone tax exclusion.

Example 1: On January 1, 2001, a National Guard member on active duty under Title 32, U.S.C. (reference (bq)), for three years is mobilized with his unit under 10 U.S.C. 672 (reference (c)). Although previously paid for career leave of 48 days, the member has elected to carry forward all 32 days of accrued unused leave from the pre-mobilization period. On April 6, 2001, he is discharged and immediately ordered to active duty for another period of 3 years. The member used leave from April 2 through 5, 2001, (4 days). He has 36 days accrued unused leave at discharge (32 days from his balance brought forward, plus 4 days accrued under the mobilization, minus the 4 days leave used). He may elect to be paid for a maximum of 16 days leave at discharge which includes the 12 days up to the 60 day limitation, plus 4 days of excepted leave (earned 8 days of excepted leave less the 4 days used). The remaining balance of 20 days (or more, if he takes payment for less than the full 16 days of leave) may be carried forward into the new active duty period. If payment is made for 12 or less days, 4 days of the carry over are an exception to the 60-day payment limitation and may be paid in the future, if they remain unused.

B. Under regulations prescribed by the Secretary of the Military Department concerned, a member sentenced to unsuspended dismissal or unsuspended dishonorable or bad-conduct discharge by court-martial may be required to take leave pending review of the

conviction (i.e. appellate leave) as provided by Article 76a, Uniform Code of Military Justice (reference (i)). Such member may elect to be paid in a lump sum for the leave accrued to his or her credit as of the day before the day the leave begins. Otherwise, each day of appellate leave shall be charged as a day of leave and the member paid accordingly until all the member's accrued leave is used. Payment shall be based on the rate of basic pay to which the member was entitled on the day before the day leave is to begin.

C. A member who is discharged under other than honorable conditions or because of fraudulent enlistment forfeits all accrued leave at the time of discharge and is not entitled to payment for accrued leave, regardless of the length of time the separated member has served.

D. A member who is enlisted or commissioned on or after October 19, 1984, and is discharged for unsatisfactory performance or misconduct for any of the reasons listed below forfeits all accrued leave at the time of discharge. Such forfeiture also applies to any member with prior military service who had a break in service of 93 or more consecutive days.

1. Enlisted members forfeit leave at discharge for the following reasons:

a. Defective enlistment or induction (minority and fraudulent entry only).

b. Entry level performance and conduct.

c. Unsatisfactory performance.

d. Homosexuality (unless the member receives an honorable discharge).

e. Drug/alcohol abuse rehabilitation failure.

f. Misconduct.

g. Separation in lieu of trial by court-martial.

h. Security (unless the member receives an honorable discharge).

2. Officers forfeit leave at discharge for the following reasons:

a. Separation for cause.

- b. Dropped from the rolls.
- c. Homosexuality (unless the member receives an honorable discharge).
- d. Misconduct/moral/professional dereliction.
- e. Separation in lieu of trial by court-martial.
- f. Security (unless the member receives an honorable discharge).

350102. Leave Accounting

A. Accrued leave must be carefully accounted for and accurately identified as to the time and circumstances under which it was earned. The number of days accrued and value of unused leave that is to be sold depends upon the timeframe and circumstances under which it was earned.

1. Leave accrued on or before August 31, 1976, is valued using basic pay, basic allowance for housing, basic allowance for subsistence and, if applicable to the individual, the personal money allowance. This leave is generally called “saved leave”.

2. Leave earned on or after September 1, 1976, is valued using only basic pay.

3. Leave accrued in a combat zone or qualified hazardous duty area or while hospitalized as a result of action in such a zone or area is generally known as combat zone tax exclusion (CZTE) leave. See paragraph 440103 of this volume for full descriptions of the circumstances under which such leave accrues. CZTE leave for enlisted members is exempt from federal income tax. CZTE leave for officers is exempt from federal income tax up to a specified limit. See paragraph 350103.B below, for a discussion of tax exclusion limits. All leave earned during a month in which a member serves for any period of time in a combat zone or qualified hazardous duty area is CZTE leave. A single day of qualifying service in such circumstance qualifies all leave accrued in that month as CZTE leave.

B. Leave accrues to a service member serving on active duty for 30 days or more. It is accrued at the rate of 2½ days for each month of active service, excluding periods of absence from duty without or over leave, periods of confinement resulting from courts-martial and periods of leave required to be taken pending review of court-martial conviction. For partial months, it accrues at the rate of ½ day for any period of 6 or less days. A member may not carry forward a leave balance of more than 60 days into a new fiscal year, except when entitled to Special Leave Accrual (SLA), as outlined below.

1. A member who serves on active duty while entitled to hostile fire/imminent danger pay for a continuous period of at least 120 days may carry forward up to 90 days of leave into the new fiscal year. Under this exemption, unused SLA leave may be carried forward until the end of the third fiscal year following the fiscal year in which the service in the qualifying hostile fire/imminent danger area is terminated.

2. A member not qualifying for SLA for service in a hostile fire/imminent danger area, may, after September 30, 1979, qualify and carry forward up to 90 days of unused leave by reason of assignment to a designated deployable ship, mobile unit, or other similar prescribed duty. The duty assignment must be under conditions where operational mission requirements prohibit normal leave utilization as determined by the military service concerned or designated commander. Under this exemption, unused SLA leave may be carried forward until the end of the third fiscal year following the fiscal year in which the qualifying service is terminated.

3. The maximum amount of leave that may be carried forward into succeeding fiscal years is the leave balance (not to exceed 90 days) as of the end of the SLA period. However, the maximum amount will be reduced to a new level whenever the leave balance drops below the previously set level. If at any time, the leave balance drops to or goes below 60 days, there is no longer any SLA protected leave. Therefore, the actual maximum leave that can be carried forward into succeeding fiscal years is the lowest leave balance achieved following the completion of the SLA duty or the usual 60 days, whichever is greater. If the SLA qualifying period crosses a fiscal year, the entire leave balance (not to exceed 90 days) will be carried forward and the leave accrued from the beginning of the new fiscal year through the end of the SLA qualifying period will be added to establish the maximum. Notwithstanding the above, any portion of a leave balance in excess of 60 days which could have been taken before the end of the fiscal year, had the member not been assigned to SLA qualifying duty, will not be included in the carry over amount.

Example 1: On August 31, 2001 a member had a leave balance of 80 days. On September 15, 2001, he was assigned to duty qualifying for SLA as described in subparagraph 350102.B.1, above. Had the member not been assigned to SLA duty, he could have possibly taken 15 days leave from September 16 through 30. If the member had taken leave during this period, there would still have been a loss of 7.5 days (82.5 days accrued through September 30 less the 15 days potentially taken and the normal 60-day carry over restriction) at the end of the fiscal year. Therefore, since only the portion that potentially could have been taken is protected, the member may carry forward 75 days and will lose 7.5 days of leave.

Example 2: The member in example 1 above, continued on SLA duty until January 31, 2002. No leave was permitted during this period and the member's accrued leave totaled 85 days at the end of January. If the leave balance does not at any time drop below 85 days it may be carried forward for 3 fiscal years, until September 30, 2005. However, the

member took 30 days of leave from April 1 through 30, 2002. This resulted in a leave balance of 62.5 days (85 days accrued through January, plus 7.5 days accrued from February through April, less the 30 days of leave taken) and a new maximum amount of leave that may be carried forward. If no further SLA is earned and the leave balance is not further reduced to a new lower level, the maximum leave the member may carry forward into succeeding fiscal years (until September 30, 2005) is 62.5 days.

C. Leave will be accounted for by crediting it sequentially in the chronological order in which it is accrued. Generally when used, leave will be charged in reverse order with the most recently accrued leave charged first. This method is known as Last In, First Out (LIFO). As an exception to this method, beginning January 1, 1996, CZTE leave will be charged ahead of all other leave, regardless of the sequence in which the CZTE leave was accrued.

Example 1: On August 31, 2001, a member had accrued 65 days of unused leave, 55 days of which had been accrued and remained unused from a period before September 1, 1976 (i.e., saved leave), and zero days of tax exempt leave. The member took leave from September 5 through 24, 2001, a period of 20 days. The leave taken is first applied to the 12 days accrued since September 1, 1976, using the LIFO method. This leaves 8 days to apply to the saved leave, reducing that balance to 47 days.

Example 2: On August 31, 2001, a member had accrued 75.5 days of unused leave, 55 days of which had been accrued and remained unused from a period before September 1, 1976 (i.e., saved leave), and 7.5 days of accrued unused CZTE leave. The CZTE leave had been earned for two separate periods, 5 days for active service from January 2 through February 6, 2001 in a combat zone and 2.5 days for active service from August 7 through 30, 2001, in a qualified hazardous duty area. The member took leave from September 5 through 24, 2001, a period of 20 days. The leave taken is first applied to the 7.5 days of CZTE leave, using the exception to the LIFO method. This leaves 12.5 days to be applied to the non-CZTE leave earned since September 1, 1976, reducing that balance to 2.5 days as of September 24, 2001. The saved leave balance remains at 55 days.

350103. Leave Payments and Taxability

A. Payments for accrued leave are normally subject to taxation and income tax withholding. However, payments for saved leave accrued before September 1, 1976, will also include non-taxable allowances. See Table 35-5 for determining the elements of pay to use in the computation of accrued leave payments.

B. Payments for CZTE leave are tax exempt from federal taxation and not subject to federal or state income tax withholding up to the monthly limit specified by the Internal Revenue Service. That limit is different for enlisted members and officers. The limit is fully described in Chapter 44, paragraph 440102.A, as summarized below.

1. Enlisted members and warrant officers (W-1 through W-5) have no limitation or ceiling on the value of payments exempt from federal taxes or from state and federal tax withholding for any month in which they qualify for an exemption.

2. Officers (O-1 and above) are subject to a limit on the value of federal tax exempt payments and from exemption from federal and state tax withholding for each month in which they qualify for an exemption. Since November 21, 1995, the exemption amount for officers has been set at the value of the highest rate of enlisted basic pay plus the value of any hostile fire or imminent danger (HF/IDP) pay the officer may have been entitled to in that qualifying month. The applicable rate of enlisted basic pay would be that listed in Chapter 2, Table 2-8, Note 2 for the corresponding qualifying month. To determine whether the limitation will apply to a payment for accrued unused leave, the leave must be allocated to the months in which earned and for which the officer qualified for CZTE status. The value of the leave for each individual month must be added to any payments the officer has received for that tax exempt month and the total compared to the monthly limitation amount. Tax exemption may only be given for the value of that portion of the CZTE leave that does not exceed the limitation available. Any payments for CZTE leave value that exceed the limitation available will be treated as taxable income.

Example: A reserve component O-5 with over 12 years service began active duty on January 25, 2002, and reported TAD to a designated combat zone on January 26, 2002. He departed the zone on March 2, 2002, and was separated from active duty and paid for unused accrued leave on March 4, 2002. The officer was entitled to monthly basic pay of \$5073.30 and to monthly imminent danger pay of \$150. The monthly basic pay for the most senior enlisted member in each military service was \$5382.90 per month during that period. The officer has been paid for his active duty service and is awaiting payment for his earned leave. He had previously sold back 58 days of leave at the end of other active duty periods. The officer earned .5 days of leave in January and again in March and 2.5 days for February. This is a total of 3.5 days leave and when added to the 58 days previously sold, would exceed the maximum of 60 days that may be sold in a career. However this leave is exempt from payment limitation since the reserve officer was on active duty for a period of more than 30, but less than 366 days. Payment of the .5 days of leave for both January and March is fully exempt from income tax and income tax withholding since the prior tax free payments for his basic pay and HF/IDP in those two months was well below the tax exemption limitation value of \$5532.90 (senior enlisted basic pay of \$5382.90 and HF/IDP of \$150). However, only a portion of the 2.5 days of unused accrued attributable to February is exempt from income tax and income tax withholding. The officer has already received tax exempt treatment of his February salary and imminent danger pay using all but \$309.60 of his available exemption (exemption equals \$5532.90 and the amount used was the officer's base pay plus the HF/IDP or \$5223.30). The 2.5 days of leave is valued at \$422.78, leaving \$113.18 of the leave payment subject to tax and tax withholding.

350104. Leave Payments and Debts. Payments for accrued leave may be used to satisfy debts to the U.S. Government without restriction.

350105. Leave Payment to Beneficiaries. Payments for accrued leave owed at death will be paid to the eligible beneficiary or beneficiaries under the provisions of Chapter 36, Section 3602.

A. If a member dies while on active duty of 30 days or more, the accrued leave is payable along with all other unpaid pay and allowances to the eligible beneficiary.

B. If a member or former member dies after retirement or discharge, but before receiving any or all compensation for accrued leave, the balance is payable to the eligible beneficiary and claims for payment must be submitted to the appropriate below listed address.

Army Members

Director
DFAS-Indianapolis Center
DFAS-PMTEC/IN
8899 E. 56th Street
Indianapolis, IN 46249-0845

Navy Members

Director
DFAS-Cleveland Center
DFAS-PMMACB/CL
1240 E. 9th Street
Cleveland, OH 44199-2055

Air Force Members

Director
DFAS-Denver Center
DFAS-PMJP/DE
6760 E. Irvington Place
Denver, CO 80279-3000

Marine Corps Members

Director
DFAS-Kansas City Center
DFAS-PMMCB/KC
1500 E. 95th Street
Kansas City, MO 64197-0001

2. Make the following changes to Table 35-1:

a. Replace the subparagraph reference in column B, rule 9 with 350101.D.

b. Replace the second sentence of note 8 with "See subparagraph 350101.A.3 for exceptions".

3. Change Table 35-2, note 3; Table 35-3, note 1; and, Table 35-4, note 1, by replacing, in each case, the second sentence with "See subparagraph 350101.A.3 for exceptions".

4. Change Table 35-5, note 6, by replacing the last sentence with "See subparagraph 350102 for examples".

5. Make the following changes to the bibliography:

a. Delete the reference to paragraph 350101 and all citations attendant to it since they are duplicative of those for subparagraph 350101.A.

b. Change the reference to subparagraph 350101.B.1 by making it 350101.A.3.

c. Change the references to subparagraphs 350101.C, 350101.D and 350101.E by making them 350101.B, 350101.C and 350101.D respectively.

d. Delete the reference to subparagraph 350101.F and move the citation to subparagraph 350101.A.3.

e. Add a new citation to subparagraph 350101.A.3.b to read:

Public Law 107-107
Section 651,
December 28, 2001